IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5613 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDBHAI JIVABHAI - Petitioner(s)

Versus

HEIRS OF DECD.HUSENBHAI MITHA-BHAI,BAI MITHIBAI HUSENBHAI & 10 - Respondent(s)

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Appearance :

NOTICE SERVED for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 9,9.2.2 - 10,10.2.2
None for Respondent(s) : 9 - 11.
- for Respondent(s) : 0.0.0,0.0.0

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/10/2005

ORAL JUDGMENT

1.In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality

and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 20.3.1991 passed in Revision Application No. TEN B.A. 545/82 in dismissing the same and confirming the order passed by the Dy. Collector, Land Reforms (Appeals), Ahmedabad dated 12.1.81 passed in Tenancy Appeal No.16/217/75 and the order passed by the Mamlatdar & ALT, Gandhinagar dated 31.12.74 passed in Tenancy Case No.140/72 by which respondent No.11 and/or his father Sikandarbhai Khusalbhai was declared as a tenant under the provision of the Bombay Tenancy Act.

2. The dispute is with regard to the land bearing Survey No.104 admeasuring 4-Acres and 14-Gunthas situated at village Pethapur, Taluka Gandhinagar which was originally owned by one Ahmedbhai Jivabhai. It appears from the record that the original land owner mortgaged the said land in question to one Husenmiya Mithabhai and others and proceedings were initiated by the Mamlatdar & ALT, Gandhinagar under Section 32(O) of the Bombay Tenancy Act and after holding an inquiry, the Mamlatdar & ALT, Gandhinagar by its order dated 25.8.67 declared the father of the respondent No.11-Sikandarbhai Khusalbhai as tenant and fixed the purchase price. Being aggrieved and dissatisfied

with the order passed by the Mamlatdar & ALT, Gandhinagar dated 25.8.67 passed in Tenancy Case No.206/67, the mortgagee i.e. heirs of deceased Huseinbhai Mithabhai challenged the said order before the Dy. Collector, Ahmedabad and the Dy. Collector, Ahmedabad remanded the matter. Thereafter, twice the Mamlatdar & ALT, Gandhinagar passed an orders declaring Sikandar Khushalbhai as tenant and said orders were challenged before the Dy. Collector, Ahmedabad and the matter was remanded. Ultimately, again on remand the Mamlatdar & ALT, Gandhinagar passed its order dated 31.12.74 in Tenancy Case No.140/72 declaring said Sikandarbhai Khusalbhai as tenant of the land in question under the provisions of the Bombay Tenancy Act by holding that said Sikandarbhai Khusalbhai was a tenant prior to the mortgage and he was cultivating the land even prior to the mortgage as a tenant. Being aggrieved and dissatisfied with the order passed by the Mamlatdar & ALT, Gandhinagar dated 31.12.74 passed in Tenancy Case No.140/72, Ahmedbhai Jivabhai-original land owner preferred appeal before the Dy. Collector, Land Reforms (Appeals), Ahmedabad being Tenancy Case No.16/217/75, which came to be dismissed by the Dy. Collector, Land Reforms (Appeals), Ahmedabad by its order dated 12.1.82. Being aggrieved and dissatisfied

with the order passed by the Dy. Collector, Land Reforms (Appeals), Ahmedabad dated 12.1.82 passed in aforesaid Tenancy Appeal, Ahmedbhai Jivabhai-original land owner preferred Revision Application being Revision Application No.TEN.B.A.545/82 which came to be allowed by the Gujarat Revenue Tribunal by its judgment and order dated 12.9.86 however, as the said order passed without giving an opportunity to the original land owner Sikandarbhai Khusalbhai i.e. father of the respondent No.11 herein, he preferred restoration application being Restoration Application No.TEN.B.A.82/87 before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal by its order dated 25.1.90 allowed the said Restoration Application and quashed and set aside the judgment and order passed by the Gujarat Revenue Tribunal dated 12.9.86 passed in Revision Application No. TEN.B.A.No.545/82. Thereafter, the matter was heard by the Gujarat Revenue Tribunal and after giving an opportunity to all the concerned parties the Gujarat Revenue Tribunal by its judgment and order dated 20.3.91 dismissed the said Revision Application confirming the order passed by the Dy. Collector, Land Reforms (Appeals), Ahmedabad as well as the order passed by the Mamlatdar & ALT, Gandhinagar declaring the said Sikandar Khusalbhai as the tenant.

Being aggrieved and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 20.3.91 passed in Revision Application No. TEN.B.A. 545/82 the original land owner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Though served, nobody appears on behalf of the petitioner. This Court has considered the judgment and order passed by the three authorities below as well as the pleadings in the present Special Civil Application. It appears that all the three authorities below have concurrently found that the original respondent No.11 i.e. the father of the respondent No.11 herein, Sikandarbhai Khusalbhai was cultivating the land in question as a tenant prior to the mortgage and therefore, he was required to be declared as a tenant under the provisions of the Bombay Tenancy Act. On appreciation of evidence even the Gujarat Revenue Tribunal exercised the powers under Section 76 of the Rules and dismissed the Revision Application. This is a petition under Article 227 of the Constitution of India and this Court is not required to re-appreciate the evidence on record. Even otherwise, on appreciation of evidence all the three authorities below have

concurrently found that Sikandarbhai Khusalbhjai was cultivating the land in question as a tenant prior to even mortgage and so he is required to be declared as a tenant under the provisions of the Bombay Tenancy Act and the same is not required to be interfered with by this Court exercising powers under Article 227 of the Constitution of India. Even otherwise, there is no jurisdictional error, much less an error of law committed by the authorities below inclusive of the Gujarat Revenue Tribunal which calls for interference by this Court exercising powers under Article 227 of the Constitution of India.

4. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

5. For the reasons stated above, the petition fails and the same is dismissed. Rule is discharged. Ad-interim relief, if any, stands vacated, however, there will be no order as to costs.

(M.R.SHAH, J.)

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